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GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,
16 Plaintiffs,
17
18 v.
19 GOOGLE INC.,
20 Defendant.

Case No. 3:10-cv-03561 WHA (DMR)

**GOOGLE INC.'S RESPONSE TO
ORDERS REFLECTED IN ECF NOS. 1523
& 1526**

Dept. Courtroom 8, 19th Fl.
Judge: Hon. William Alsup

1 Defendant Google Inc. (“Google”) submits the following statement in response to the
 2 Court’s orders reflected in Docket Numbers 1523 and 1526. In those orders, the Court stated that
 3 it is considering imposing on both sides a ban on any and all Internet research on the jury
 4 members prior to verdict. Provided the ban applies equally to both parties, Google has no
 5 objection to imposition of such a ban in this case. Google does respectfully request, however,
 6 that the parties be permitted an hour of voir dire per side in light of the fact that the parties will
 7 not have the benefit of any jury questionnaire to facilitate jury selection.

8 The Court also requested information concerning the extent to which the law and rules of
 9 professional conduct permits review of jurors’ Internet presence by various means, including
 10 social media. Recently, the Standing Committee on Ethics and Professional Responsibility of the
 11 American Bar Association provided guidance in its 2014 Formal Opinion 466 entitled “Lawyer
 12 Reviewing Jurors’ Internet Presence” to clarify the extent to which Internet research concerning
 13 jurors is permitted. In that Opinion, the ABA states that passive review of a juror’s *public*
 14 presence on the Internet is ethically permissible provided the lawyer does not access or request
 15 access to a *private* area on a juror’s electronic accounts or Internet presence (*e.g.*, Facebook,
 16 MySpace, LinkedIn, and Twitter, Google accounts, Internet searches, and other social media or
 17 electronic accounts). ABA Formal Opinion 466 at 9 (“In sum, a lawyer may passively review a
 18 juror’s public presence on the Internet, but may not communicate with a juror. Requesting access
 19 to a private area on a juror’s ESM is communication within this framework.”). In other words,
 20 the parties’ lawyers and any employees or investigators assisting them in jury selection are
 21 permitted to conduct Internet research relating to jurors provided they are merely researching
 22 publicly available areas of the Internet without actively accessing or seeking access to a private
 23 area of a juror’s electronic accounts or Internet presence (*e.g.*, sending a “friend request” on
 24 Facebook, “following” a Twitter account, or requesting an existing “friend” or “follower” to
 25 access the private levels of a juror’s social media accounts). Google respectfully submits that the
 26 discussion in ABA Formal Opinion 644 of the ethically permissible passive review a juror’s
 27 public presence on the Internet fully addresses the specific questions raised by the Court.
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1 Dated: March 8, 2016

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